

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-215714

DATE: December 3, 1984

MATTER OF: H.V. Allen Co., Inc.

DIGEST:

1. Where only documentary evidence as to time of receipt of bid modification at government installation shows it was received after bid opening, modification was properly rejected as late.
2. Award of a contract while a protest is pending is permissible under Federal Acquisition Regulation, § 14.407-8(b)(4).

H.V. Allen Co., Inc. protests the failure of the Navy to consider its bid modification, which was received after bid opening under invitation for bids (IFB) No. N62467-83-B-9684 issued by the Naval Air Station, Dallas, Texas. We deny the protest.

Bid opening was scheduled for 3:00 p.m. on Tuesday, June 26, 1984. The IFB provided that bids would be received at the office of the Officer in Charge of Construction, Building 39. However, Allen's telegraphic bid modification, which was converted to a mailgram at the Dallas Central Post Office, was not received by the designated office until June 27 at 3:19 p.m., as evidenced by the time/date stamp. Therefore the modification was determined to be late and was not considered by the agency. Allen maintains, however, that late receipt of its bid modification was due solely to mishandling after receipt at the government installation and should have been considered for award under the invitation's late bid clause.

Allen supports its assertion that the bid modification was timely received at the installation by stating 1) that according to Western Union documentation, the telegram transmitting the modification was received at the Dallas Central Post Office at 2:33 p.m. on June 25, and 2) that according to the post office, Allen's bid modification telegram was placed in a mailgram envelope and then placed

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with the regular mail destined for the Naval Air Station before 5:00 p.m. on June 25. Further, the protester states that according to the post office, there is one delivery per day, Tuesday through Saturday to the Naval Air Station and that delivery is completed before 8:30 a.m. Therefore, Allen argues that the mailgram should have arrived at the government installation with the 8:30 a.m. mail delivery on Tuesday, June 26, which was approximately 6 hours prior to the scheduled bid opening. Allen believes the receipt of the bid modification by the designated office was delayed because the installation's mailroom was not properly staffed to handle the backlog resulting from the normal Monday closure of the mailroom.

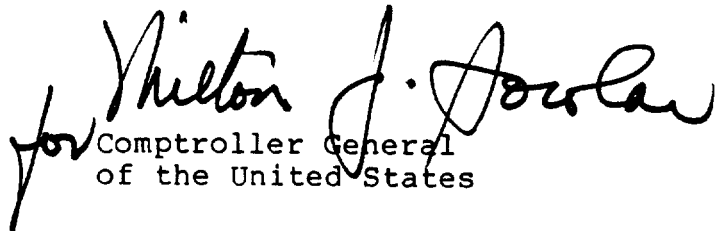
The solicitation's late bid clause permits consideration of a bid or a bid modification not received prior to contract award if it was sent by mail (or telegram if authorized) and it is determined that late receipt was due solely to government mishandling, after receipt at the government installation. The time of receipt at the installation, however, must be established before the question of government mishandling can be considered. Standard Mfg. Inc., B-209575, March 7, 1983, 83-1 CPD ¶ 216. The only acceptable evidence to establish the time of receipt at the government installation is the installation's time/date stamp on the bid wrapper or other documentary evidence maintained by the installation. Federal Acquisition Regulation, 14.304-1(c), 48 Fed. Reg. 42,102, 42,178 (1983) (to be codified at 48 C.F.R. § 14.304-1(c)).

In this case the only documentary evidence of receipt maintained by the installation is the time/date stamp of the office designated for bid receipt, which indicated that the amendment was received 1 day after bid opening. There is no record to indicate that the installation's mailroom received the mailgram in sufficient time for delivery to the designated office prior to bid opening. The evidence presented in this regard is purely circumstantial and does not meet the strict evidentiary requirements needed to establish timely receipt at the installation. Since the protester has not established that its bid modification was timely received at the Navy installation prior to the time of bid opening, we need not reach the issue of whether government mishandling caused the bid to arrive late at the bid opening location. Standard Mfg. Inc., supra.

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Allen also contends that the agency acted improperly by making the award before resolution of the protest. The agency, however, made a determination to proceed with award as required by FAR, § 14.407-8(b)(4), 48 Fed. Reg. 42,102, 42,184, and notified our Office of its intention to award notwithstanding the protest, as required. We therefore have no basis to object to award. Sentinel Electronics, Inc., B-212770, Dec. 20, 1983, 84-1 CPD ¶ 5.

The protest is denied.

for 
Comptroller General
of the United States